3

IN THE HIGH COURT OF JUDICATURE AT JABALPUR

CRIMINAL APPEAL NO. 2542 /1999.

(APPEAL UNDER SECTION 374(2) OF THE CRIMINAL PROCEDURE CODE, 1973)

(12404)

Filed on 22/9/99
by Shri P. Chowby Advocate

Rlw. A.R.

Appellant: (In jail) Panchram S/o Mohan Satnami, aged about 40 years, resident of Chherkadih, Police Station-Palari, District, Raipur (MP).

//Versus//

Respondent: State of Madhya Pradesh through Police Station-Palari, District, Raipur (MP).

APPEAL UNDER SECTION 374(2) OF CRIMINAL PROCEDURE CODE,1973.

19

CRIMINAL APPEAL NO.2542 OF 1999

Panchram

Vs.

The State of Madhya Pradesh (Chhattisgarh).

J U D G M E N T

IN THE HIGH COURT OF CHHATTISGARH : BILASPUR

CRIMINAL APPEAL NO.2542 OF 1999

Panchram

Vs.

The State of Madhya Pradesh (Chhattisgarh)

J U D G M E N T

The appellant being aggrieved by the judgment dated 09/09/1999 passed in Sessions Trial No.400 of 1998 by the learned First Additional Sessions Judge, Baloda Bazar convicting the appellant under Section 376 (1) I.P.C. and sentencing him to undergo R.I. for seven years and pay a fine of Rs.1,000/-, in default of payment of fine to undergo further R.I. for two months, has filed this appeal.

(2) The prosecution case in brief is that on 07/09/1998 when the prosecutrix Rameshwari Bai (PW-8) was going to fetch water the accused caused intimidation caught-hold of her, dragged to his house and after felling her on ground committed rape upon her and thereafter caused her certain injuries. When the prosecutrix was going to fetch water she was accompanied with her sister-in-law namely Maina Bai (PW-9). The said girl Maina Bai immediately, after the prosecutrix was caught-hold rushed to her house and on arrival of her brother (husband of the prosecutrix) informed him of the incident. The said brother thereafter informed of the incident to his father and thereafter each of them went to the house of the accused, but on way they found the prosecutrix coming back in the injured condition who immediately informed all of them that the accused had

committed rape upon her. Immediately thereafter under Ex.P/14 a written report was submitted to the police. On the said application F.I.R. (Ex.P/15) was registered and the prosecutrix was sent for her medical examination. She was examined by Dr. Smt. Rajshree Devdhar (PW-4) who found number of injuries on her person, but, however, was unable to give any positive report relating to sexual assault as the woman was already married. After making proper investigation the police filed the challan before the competent Court. The trial Court after recording the evidence and hearing the parties convicted and sentenced the accused as referred to above.

(3) Smt. Kiran Jain, learned counsel for the appellant, submits that the statements of Rameshwari Bai (PW-8) and Maina Bai (PW-9) are unnatural and as Dr. Smt. Rajshree Devdhar (PW-4) has not given any positive opinion about the sexual assault the accused deserves to be acquitted.

(4) On the other hand, Shri Deep Kesharwani, learned counsel for the State, submits that the findings recorded by the Court below are in accordance with law and as the findings recorded by the Court below are neither perverse nor fanciful the appeal deserves to be dismissed.

(5) Rameshwari Bai (PW-8) has stated before the Court that while she in the company of her sister-in-law was going to fetch water, the accused pounced upon her caught-hold of her arm and dragged her towards his house. On intervention of Maina Bai (PW-9) the accused slapped her and thereafter took the prosecutrix to his house, thereafter he fell the prosecutrix to ground and committed rape upon her, thereafter he caused injuries on the calves, back, arms and the waist. On this material aspect that she was apprehended by the accused and the accused on intervention of Maina Bai slapped her, the

prosecutrix is well supported by Maina Bai (PW-9). In the cross-examination the accused had simply suggested that because of the certain earlier disputes he was being falsely implicated. It was suggested by the accused that he was a married man and looking to his status in the life and position in the society he would not commit such a crime. In cross-examination paragraph 11 the prosecutrix candidly stated that the accused hit her by means of a Lathi which caused her number of injuries. According to her she narrated the incident to her husband and immediately thereafter the incident was informed to number of the persons. In the cross-examination of Rameshwari Bai (PW-8) and Maina Bai (PW-9) the accused could not bring out anything to discredit the testimony of these two witnesses. The fact that the accused had caused injuries to the prosecutrix is also supported by Dr. Smt. Rajshree Devdhar. In her examination-in-chief para 2 she has clearly stated that on her breasts and abdominal region, there were number of scratch marks. In both the arms and the legs she was feeling tenderness. There were marks of the injuries near the thumb of the left hand. There were other injuries on the said arms and on the outer side of the right arm there was swelling measuring 3" x 2". In the cross-examination it has been suggested that the injuries could be caused during the scuffle. Even if the suggestion is accepted it would not brighten the case of the accused because the prosecutrix clearly stated that when she was fell on the ground she tried to resist and thereafter the accused committed rape upon her.

(6) After going through the records afresh I am unable to hold that the Court below was unjustified in recording the findings against the interest of the accused.

(7) I am unable to hold that present is a fit case which

23

suffers with the vice of excessiveness in awarding the sentence. The Court below was justified in convicting and sentencing the accused. The appeal is dismissed.

Sd/-
R.S. Garg
Judge

19/03/2001.